

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 706

Introduced by McDonald, 41; Louden, 49

Read first time January 19, 2005

Committee: Agriculture

A BILL

1 FOR AN ACT relating to fence viewing; to amend sections 2-4801,
2 34-104, 34-105, and 34-107 to 34-111, Reissue Revised
3 Statutes of Nebraska; to eliminate fence viewing as a
4 resolution option for fence disputes; to provide for
5 mediation for resolution of fence disputes; to harmonize
6 provisions; to provide an operative date; to repeal the
7 original sections; to outright repeal section 34-106,
8 Reissue Revised Statutes of Nebraska; and to declare an
9 emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-4801, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-4801. Sections 2-4801 to 2-4816 and section 2 of this
4 act shall be known and may be cited as the Farm Mediation Act.

5 Sec. 2. The Farm Mediation Act shall apply to fence
6 disputes pursuant to sections 34-104 to 34-111.

7 Sec. 3. Section 34-104, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 34-104. The value of such fence, and the proportion
10 thereof to be paid by each adjoining landowner and the proportion
11 of the division fence to be made and maintained by each adjoining
12 landowner shall be determined by ~~fence viewers~~ as hereinafter
13 provided for a mediator as defined in section 2-4802.

14 Sec. 4. Section 34-105, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 34-105. If disputes arise between the owners of
17 adjoining lands concerning the proportion of fence to be made or
18 maintained by either of them, such disputes shall be settled ~~by~~
19 ~~fence viewers~~ pursuant to the provisions of the Farm Mediation Act.
20 In such case it shall be the duty of the ~~fence viewers~~ mediator as
21 defined in section 2-4802 to distinctly mark and define the
22 proportion of the fence to be made or maintained by each.

23 Sec. 5. Section 34-107, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 34-107. ~~Upon receipt of a written request of any~~
26 ~~landowner, the county clerk shall assign three fence viewers from~~
27 ~~the panel of fence viewers appointed under section 34-106 to~~
28 ~~determine any controversy arising under sections 34-101 to 34-117.~~

1 None of the fence viewers assigned shall be related by blood or
2 marriage to the contending parties nor be financially interested in
3 the outcome of the dispute. If the county clerk is unable to
4 assign three fence viewers for any reason, the clerk shall notify
5 the county sheriff who shall serve in place of the fence viewers or
6 as one of the fence viewers, and all references to fence viewers in
7 this section and sections 34-104 to 34-111 shall be construed to
8 mean the county sheriff if the sheriff is serving in place of the
9 fence viewers.

10 Before assigning the fence viewers, the clerk A landowner
11 shall request, in writing, mediation services for any fence
12 dispute. The mediator as defined in section 2-4802 shall first
13 require the landowner to show proof that notice has been given to
14 adjoining landowners. Such notice shall be served upon any
15 nonresident landowner by publication in a newspaper published in
16 the county where the land is situated or by delivering a copy of
17 the letter requesting the assignment of fence viewers mediation to
18 the occupant of such adjoining land or the landowner's agent in
19 charge of such land. The fence viewers mediator so assigned shall
20 examine the premises and hear the allegations of the parties. The
21 decision of any two of them shall be final upon the parties to such
22 disputes and upon all parties holding under them. Any mediation
23 agreement signed by both parties is a binding legal contract.

24 Sec. 6. Section 34-108, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 34-108. The fence viewers mediator as defined in section
27 2-4802 shall determine by written order the obligations, rights,
28 and duties of the respective parties in the controversy, shall

1 assign to each landowner the part of the fence which the landowner
2 shall erect, maintain, repair, or pay for, shall fix the value,
3 including the costs of material and labor, and shall prescribe the
4 time within which the erection, maintenance, or repair shall be
5 completed or paid for. The ~~fence viewers~~ mediator shall file the
6 order forthwith in the office of the county clerk. Any person
7 affected by ~~an~~ such order ~~of the fence viewers~~ may appeal to the
8 district court within ten days after the date such order is filed.

9 Sec. 7. Section 34-109, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 34-109. ~~Fence viewers~~ The mediator as defined in section
12 2-4802 may examine witnesses on any and all questions submitted to
13 ~~them~~ him or her, and shall have power to issue subpoenas for, and
14 administer oaths to such witnesses.

15 Sec. 8. Section 34-110, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 34-110. ~~Fence viewers~~ Mediators shall be entitled to
18 ~~thirty dollars each for any one dispute plus expenses, to be paid~~
19 ~~in the first instance by the party requiring the service fees not~~
20 ~~to exceed actual costs.~~ All expenses of the view shall be borne
21 equally between the parties. ~~except in case of view to appraise~~
22 ~~damages for neglect or refusal to make or maintain a just~~
23 ~~proportion of the division fence, in which case the cost of view~~
24 ~~shall be paid by the party in default and may be recovered as a~~
25 ~~part of the damage assessed.~~

26 Sec. 9. Section 34-111, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 34-111. If any person who is liable to contribute to the

1 erection, maintenance, or reparation of a division fence by order
2 of the ~~fence viewers~~ mediator as defined in section 2-4802 fails to
3 appeal the order and neglects or refuses to make and maintain his
4 or her proportion of such fence within the time prescribed in the
5 order filed with the county clerk as provided in section 34-108,
6 the party so neglecting or refusing shall be liable to the party
7 injured for all damages which thereby accrue. The ~~fence viewers~~
8 mediator shall provide for the erection or repair of the same at
9 the expense of the party so defaulting. The ~~fence viewers~~ mediator
10 shall require the complaining landowner to deposit with the ~~fence~~
11 ~~viewers~~ mediator a sum of money in the amount prescribed in the
12 order sufficient to pay for the erection, repair, or maintenance of
13 the fence together with the fees ~~and costs~~ of the ~~fence viewers~~
14 mediation. The complaining landowner may be engaged by the ~~fence~~
15 ~~viewers~~ mediator to perform the erecting, repair, or maintenance of
16 the fence.

17 Unless the party in default reimburses the complaining
18 landowner within thirty days following the completion of the
19 erection, repair, or maintenance of the fence, the ~~fence viewers~~
20 mediator shall certify the amount deposited by the complaining
21 landowner to the county treasurer who shall collect the amount as a
22 special assessment against the real estate owned by the party or
23 parties in default. The county treasurer shall reimburse the
24 injured party the amount certified upon collection of the
25 assessment. If the party in default is an agency of the State of
26 Nebraska, the injured party may seek reimbursement pursuant to
27 section 81-1170.01.

28 Sec. 10. This act becomes operative on July 1, 2005.

1 Sec. 11. Original sections 2-4801, 34-104, 34-105, and
2 34-107 to 34-111, Reissue Revised Statutes of Nebraska, are
3 repealed.

4 Sec. 12. The following section is outright repealed:
5 Section 34-106, Reissue Revised Statutes of Nebraska.

6 Sec. 13. Since an emergency exists, this act takes
7 effect when passed and approved according to law.